

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV 12 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

REBECCA W.,)	2 CA-JV 2010-0071
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, CHYANE D., ETHAN W., and)	
SETH W.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18740600

Honorable Peter Hochuli, Judge Pro Tempore

AFFIRMED

The Law Office of Ronald Zack
By Ronald Zack

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Judge.

¶1 Rebecca W. challenges the juvenile court's June 25, 2010, order terminating her parental rights to Chyane D., born May 2005; Ethan W., born March

2004; and Seth W., born November 2002, on the grounds of neglect or abuse and length of time in care (fifteen months or longer). *See* A.R.S. § 8-533(B)(2), (8)(c).¹ We affirm for the reasons stated below.

¶2 Before the juvenile court may terminate a parent’s rights to his or her child, it must find that clear and convincing evidence establishes at least one of the statutory grounds for termination and that a preponderance of the evidence establishes that termination is in the child’s best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). On appeal, we view the evidence and all reasonable inferences in the light most favorable to upholding the court’s order. *See Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We do not reweigh the evidence presented to the juvenile court because, as the trier of fact, that court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Consequently, we will affirm the order if there is reasonable evidence in the record supporting the factual findings upon which the court’s order is based and the court has correctly applied those facts to the law. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¹The juvenile court also severed the parental rights of Ethan’s and Seth’s father, Robert W., and this court affirmed the termination on appeal. *Robert W. v. Ariz. Dep’t of Econ. Sec.*, No. 2 CA-JV 2010-0021 (memorandum decision filed June 17, 2010). Chyane was reconnected with her father during the dependency; the plan is for Chyane to be placed with him, as he wishes to obtain custody of Chyane and have his current wife adopt her.

¶3 On appeal Rebecca challenges the sufficiency of the evidence to support the court's order. Relying on *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), she maintains that the Arizona Department of Economic Security (ADES) did not make diligent efforts to reunify her with her children; therefore the evidence was insufficient on the ground of out-of-home placement for fifteen months or longer. Rebecca insists that she was "compliant" with the case plan and had remedied the circumstances that had caused the children to remain out of the home and that ADES failed to prove she will be unable to parent the children in the near future.

¶4 After a four-day severance hearing, conducted in March and April 2010, the juvenile court issued a six-page minute entry ruling in which it entered extensive, detailed findings of fact, and drew conclusions based on those facts as they related to the grounds ADES had alleged in its November 2009 motion to terminate Rebecca's parental rights. The court reviewed the family's lengthy involvement with ADES and identified the plethora of services Rebecca had been provided, which were designed to reunify her with the children. As the court noted, the children had been removed from Rebecca's custody in July 2008 based on reports that they were being neglected and abused; a Child Protective Services (CPS) investigator had observed the family in the shelter in which they were living and at day care, noting that the children were "out of control."

¶5 No purpose would be served by restating the juvenile court's ruling in its entirety here; instead, because there is an abundance of evidence to support the court's factual findings and legal conclusions, we adopt the order. See *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08; accord *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358,

1360 (App. 1993). With respect to Rebecca's contention on appeal that ADES did not sustain its burden of establishing the elements of § 8-533(B)(8)(c), the record supports the findings related to that statutory ground. There was ample evidence in the record that ADES had provided a panoply of services and, as the court found, "[a]t the conclusion of the [severance hearing] we were twenty-one plus months into the dependency and most of the issues [Rebecca] had when the dependency started still exist."

¶6 Rebecca points to evidence regarding her progress over the course of the dependency, including periods of sobriety and participation in services, suggesting such evidence negates the court's finding that she would be unable to parent the children in the near future, one of the elements of § 8-533(B)(8)(c). She attributes her slow progress to financial challenges and health issues that were beyond her control. She also maintains that her children, particularly the boys, were simply difficult to manage. She maintains ADES initially did not provide services designed to address the special challenges presented by her children's behavioral problems. But the court was aware of the evidence about the children's behavior, Rebecca's progress, the challenges Rebecca faced, and the kinds of services ADES had provided. It was for the juvenile court to weigh this evidence. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205 (appellate court defers to juvenile court to determine witness credibility, evaluate evidence, and resolve conflicts in evidence). As the court noted in the beginning of its order, its findings and conclusions were based on its assessment of the evidence after it had considered "all the evidence, including the testimony of witnesses, [and] their credibility and demeanor while testifying." Because there is reasonable evidence in the record to support the

court's findings, we have no basis for disturbing the court's ruling for the reasons Rebecca suggests.

¶7 We need not address Rebecca's challenge to the sufficiency of the evidence with regard to the termination of her rights pursuant to § 8-533(B)(2). We may sustain the juvenile court's ruling so long as we have found at least one statutory ground the court relied on is supported by the record. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (legally sufficient proof of any one ground will support severance of parental rights). In any event, as we stated above, we have adopted the juvenile court's order in its entirety because reasonable evidence in the record supports it and its legal conclusions are correct. And the court's order contains detailed factual findings regarding the neglect and abuse the children had suffered while in Rebecca's care.

¶8 Rebecca next contends there was no evidence that termination of her parental rights was in the children's best interests. To establish that terminating a parent's rights is in a child's best interests, the evidence must establish the child "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945; *see also In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990) (to establish severance in child's best interests, "petitioner might prove that there is a current adoptive plan for the child or that the child will be freed from an abusive parent") (emphasis omitted). Again, we refer to the juvenile court's thorough order, which we have adopted.

¶9 The juvenile court described the children’s current situation, finding they all needed permanency and could no longer “wait for” their mother. The court acknowledged the boys are a “handful” and that the maternal grandfather and his wife had equivocated about whether they felt capable of accepting responsibility for them; ultimately, they committed to adopting the boys. All three children had been with the maternal grandfather and his wife for most of the twenty-one months they had been out of the home and had thrived while out of Rebecca’s care. And the long-term plan for Chyane is to be placed with her father. In any event, the court found all three children are adoptable. Rebecca’s contention that there is no evidence supporting the court’s best-interests findings is belied by the record.

¶10 Rebecca has not sustained her burden of establishing the court abused its discretion when it terminated her parental rights to her children. We therefore affirm the juvenile court’s order.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge